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DA 99-493

DISPATCHED BY  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-50
Table of Allotments,	)	RM-9247
FM Broadcast Stations.	)	
(Healdton, Oklahoma and Krum, Texas)	)	
	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-75 ✓
Table of Allotments,	)	RM-9264
FM Broadcast Stations.	)	
(Pauls Valley and Healdton, Oklahoma)	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: March 3, 1999

Released: March 12, 1999

By the Chief, Allocations Branch:

1. At the request of AM & PM Broadcasters, LLC (formerly Lake County Communications, Inc.)<sup>1</sup> ("AM & PM" or "petitioner"), the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 7175 (1998), proposing the substitution of Channel 229C3 for Channel 229C2 at Healdton, Oklahoma, the reallocation of Channel 229C3 to Krum, Texas, as the community's first local aural service, and the modification of Station KICM's license to specify Krum as its community of license. AM & PM filed comments supporting the proposal and reiterating its intention to apply for the channel, if allotted.<sup>2</sup> No other comments were received. At the request of AM & PM Communications, LLC (formerly Wright & Wright, Inc.)<sup>3</sup> ("AM & PM" or "petitioner"), the Commission also has before it the Notice of Proposed Rule Making, 13 FCC Rcd 11896 (1998), proposing the reallocation of Channel 249C3 from Pauls Valley to Healdton, Oklahoma, as the community's first or second local aural service, and the modification of Station KGOK's license accordingly. Petitioner filed comments reiterating its

<sup>1</sup> The transfer of control of Station KICM from Lake County Communications, Inc. to AM & PM Broadcasters, LLC, was consummated on April 20, 1988. The majority owner of AM & PM Broadcasters, LLC, is also the majority owner of AM & PM Communications, LLC.

<sup>2</sup> After the record closed, AM and PM filed a supplement to their comments, unaccompanied by a request for their acceptance. Inasmuch as these unauthorized comments do not provide any information of decisional significance, they will not be considered.

<sup>3</sup> The transfer of control of Station KGOK from Wright & Wright to AM & PM Communications, LLC, was consummated on June 2, 1998.

intention to apply for the channel, if allotted. After the record closed, petitioner filed a supplement to its comments and request to expedite a decision in this proceeding.<sup>4</sup> No other comments were received. These proceedings are being consolidated for consideration herein since the proposals are interrelated.

2. As set forth in the MM Docket No. 98-50 Notice, AM &PM seeks the downgrade of Station KICM's operating channel from a Class C2 to a Class C3, the reallocation of Channel 229C3 from Healdton to Krum, and the modification of its license to specify Krum as its community of license pursuant to the provisions of Section 1.420(i) of the Commission's Rules. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). The substitution of channels and allotment at Krum would provide the smaller community (1,542 people vs. 2,982 people) with its first local aural service. However, as stated in the Docket 98-50 Notice, this reallocation would come at the expense of Healdton losing its sole local aural service. While petitioner noted that the Commission had before it a request filed by then petitioner Wright and Wright to reallocate Channel 249C3 from Pauls Valley to Healdton, the Docket 98-50 Notice pointed out that we could not consider Channel 249C3 as a Healdton allotment since it was speculative as to whether the channel would be reallocated.<sup>5</sup> Therefore, AM & PM was requested to provide further information as to how the reallocation provides a public interest benefit sufficient to overcome the Commission's stated reluctance to remove a community's sole local service.

3. In response, petitioner states that Krum is a rapidly growing community whose "substantial need for a first local service strongly outweighs the modest and shrinking interests of Healdton." It states that this growth is evidenced by the fact that the Krum school district's "trade area" has increased 600% since 1989, the police force has been expanded by 50% since last year, the community's intermediate school has been expanded twice in the last decade, a new twelve-store shopping center is being constructed, the number of postal boxes in Krum's zip code has nearly doubled since 1995, and the number of churches within Krum has increased from 3 to 5. According to the petitioner, Krum also has its own local mayor-council government, a fire department, water system, city hall, four public schools, central post office and dozens of local businesses. It argues that while the 1990 Census data shows that Healdton is the larger of the two communities, the population of Healdton declined almost 25% between 1980 and 1990

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<sup>4</sup> The Commission's rules do not contemplate the filing of pleadings beyond the comment and reply comment period set forth in the Notice of Proposed Rule Making. However, in this case we will accept petitioner's supplemental comments since the proposal is unopposed and in the interest of having before us a complete record.

<sup>5</sup> At the time the Docket 98-50 Notice was adopted, the petition to reallocate Channel 249C3 from Pauls Valley to Healdton had been returned as unacceptable for consideration because of a short-spacing to the licensed transmitter site of Station KLAQ, Durant, Oklahoma. See Letter from Chief, Allocations Branch, to Robert Lewis Thompson, March 26, 1998. This petition was subsequently accepted for rule making and is now the subject of a Notice of Proposed Rule Making. See MM Docket No. 98-75, 13 FCC Rcd 11896 (1998).

(3,769 to 2,872). It attributes the population drop to the decline of the oil industry, the area's major employer, which in turn has led to the shutdown of "numerous" area businesses, including a department store, lumberyard, restaurants and retail establishments. However, during this same time period, petitioner states that the population of Krum grew nearly 60% from 1980 to 1990 (917 to 1,542), and it believes that at this rate the population of Krum by January 1999 will be larger than that of Healdton. Petitioner also points out that the reallocation of Channel 229C3 to Krum will allow Station KICM to increase the population it serves from its present 92,208 persons to 165,673 persons. Finally, petitioner argues that the reallocation of Channel 229C3 should not be denied solely on the basis that Healdton would be left without any local aural service while the proposal to reallocate Channel 249C2 from Pauls Valley to Healdton is pending. Therefore, it requests that this proceeding be held in abeyance pending resolution of MM Docket No. 98-75.

4. As stated in the MM Docket No. 98-75 Notice, the proposal would represent a first local service at Healdton if the request of AM and PM Communications to relicense Station KICM from Healdton to Krum, Texas, is granted. However, because the outcome of the Healdton-Krum proceeding was speculative at the time the Notice in this proceeding was adopted, petitioner was requested to provide further information demonstrating why the reallocation, as a second fulltime local aural service at Healdton, would result in a preferential arrangement of allocations. Pauls Valley, with a 1990 U.S. Census population of 6,150 people, would retain local aural service from daytime-only AM Station KVLH.

5. In response, AM and PM states that the reallocation of Channel 249C3 from Pauls Valley to Healdton would "derivatively" serve the public interest because the "public interest so strongly supports" the Healdton to Krum reallocation. It states that Healdton would retain a local fulltime aural service while enabling the "rapidly growing" community of Krum to receive its first such service. Petitioner also maintains that Pauls Valley will retain a fulltime aural facility as the Commission has proposed the allocation of Channel 291A and Channel 283A to Pauls Valley in MM Dockets 97-84 and 98-140, respectively.<sup>6</sup> In its supplemental comments, petitioner notes the counterproposal in MM Docket 98-140 seeking the allocation of Channel 283A to Wynnewood, Oklahoma, as the community's first local aural service. While taking no position on the merits of the counterproposal, AM and PM points out that a Channel 283A Wynnewood allocation would also provide Pauls Valley with a city-grade, 70 dBu signal. Further, it argues that since stations are no longer required to maintain their main studio or public inspection file within the community of license, it is less important that Pauls Valley be the community of license than it is that all of the community receive city-grade service from a "local" station. In fact, petitioner states that "[e]very licensed station must serve the needs and interests of its entire service area."

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<sup>6</sup> The proposal to allocate Channel 291A to Pauls Valley proposed in MM Docket 97-84 was dismissed because no party filed comments expressing continuing interest. See, 13 FCC Rcd 13458 (1998). The proposal in MM Docket 98-140 to allocate Channel 283A to Pauls Valley was denied in favor of a first local aural service at Wynnewood, Oklahoma. See, Report and Order, released January 19, 1999, DA 99-114, 14 FCC Rcd \_\_\_\_ (1999).

4. We are guided by the Commission's allotment priorities in determining whether the interrelated change of community proposals will result in a preferential arrangement of allotments.<sup>7</sup> Based upon these priorities, we find that the public interest would be served by granting the two requests. The reallocation of Channel 229C3 to Krum would provide the community with its first local aural transmission service. While this would normally result in the loss of Healdton's sole local aural transmission service, an action which we would be hesitant to take, the interrelated proposal to reallocate Channel 249C3 from Pauls Valley to Healdton will restore the community's local service. We recognize that the substitution of Healdton's present Class C2 station with a Class C3 station will result in a loss of a fourth service to 22 people within a 48.6 square kilometer (18.8 square mile) area and a loss of a fifth service to 3,762 persons within a 1,297 square kilometers (395 square mile) area. However, the allotment of Channel 229C3 to Krum will enable Station KICM to provide service to an additional 39,256 persons and we find that this gain outweighs the loss of service by 3,784 persons. Further, the staff engineering analysis shows that while Station KICM, as a Krum station, will encompass all of the Denton, Texas, Urbanized Area within its 60 dBu contour, only 22% will be encompassed within the station's 70 dBu contour. Therefore, the concerns which the Commission has expressed concerning the migration of stations from rural to urban communities is not applicable here. See Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). In addition, the reallocation of Channel 249C3 from Pauls Valley to Healdton will not leave Pauls Valley without any local aural service. Rather, it will continue to receive such service from daytime-only AM Station KVLH..

5. Channel 229C3 can be allotted to Krum with a site restriction of 22.3 kilometers (13.9 miles) northeast to accommodate petitioner's desired transmitter site.<sup>8</sup> Channel 249C3 can be allotted to Healdton with a site restriction of 6.6 kilometers (4.1 miles) north, at coordinates 34-17-28 NL; 97-29-23 WL, to accommodate petitioner's desired transmitter site.<sup>9</sup>

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 26, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Healdton, Oklahoma	249C3
Pauls Valley, Oklahoma	--

<sup>7</sup> The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

<sup>8</sup> The coordinates for Channel 229C3 at Krum are 33-26-34 NL; 97-08-08 WL.

<sup>9</sup> The coordinates for Channel 249C3 at Healdton are 34-17-28 NL; 97-29-23 WL.

Krum, Texas

229C3

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of AM & PM Broadcasters, LLC, for Station KICM, IS MODIFIED to specify operation on Channel 229C3, in lieu of Channel 229C2, and to specify Krum, Texas, instead of Healdton, Oklahoma, as its community of license, and that the license of AM and PM Communications, LLC, for Station KGOK, IS MODIFIED to specify Healdton, Oklahoma, instead of Pauls Valley, Oklahoma, as its community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of these proceedings, AM & PM Broadcasters, LLC, licensee of Station KICM, and AM & PM Communications, LLC, licensee of Station KGOK, are required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau